

VIA EMAIL

September 23, 2013

Mayor Sweeney, Mayor Pro Tempore Salinas, and Council Members Peixoto, Halliday, Zermeño, Jones & Mendall
City of Hayward
777 B Street
Hayward CA 94541-5007

Re: **Alcohol Beverage Outlet Regulations: Recommended Revisions**
24 September 2013 City Council Meeting: Public Hearing: Item 8

Mayor & Council Members:

Together with certain others, I own the real property more particularly identified as Alameda County APN 078C-461-1-13 and -14; I'm writing today in regards to the above-referenced matter.

As you know, the proposal before you tonight is the product of a joint Council and Planning Commission work session, three (3) City Council public hearings, a City Council work session, two (2) community meetings, and the recent Planning Commission public hearing. Together with the attendant work by City staff, the effort has stretched out over the past twenty (20) months or so. During such time, City staff has diligently studied a number of other municipalities in the State — including, but not limited to, several in Alameda County — looking at the approach taken by each at regulating similar establishments. The end result is a very strong work product compiled by City of Hayward staff. It's substantive and comprehensive; care and attention to detail are each readily in evidence. In particular, we commend Director of Development Services David Rizk for his hard work here.

After holding a public hearing on 5 September 2013, the Planning Commission voted unanimously in support of the proposed regulations, definitions, text, and fees, with relatively minor changes. We believe this vote is a very strong endorsement.

We strongly support the proposed revisions — those before you tonight — to the City's Alcohol Beverage Outlet Regulations, Zoning Ordinance definitions, and Zoning District text; the proposed new Cabaret and Dance Regulations; and the proposed new Fees.

We owners respectfully wish to make the following two (2) recommendations:

1. Alcohol Beverage Outlet Fees: Level II

At present, the draft Alcoholic Beverage Outlet Fees are uniform, setting two fees — Level I and Level II — equally applied to any and all establishments within the attendant categories.

Within the Level II fee category, we **recommend** the City establish two (2) tiers:

(i) Tier I: For any Level II business with one or more serious incidents in, near or around the premises at any time over the past three (3) years — where a serious incident is defined as an assault with a deadly weapon, a battery, a violent robbery, or a violation of the ABC license issued to such business — the City shall inspect six (6) times per year; the cost recovery fee shall be set accordingly; and

(ii) Tier II: For any Level II business with no serious incidents, the City shall inspect three (3) times per year; the cost recovery fee shall be set accordingly.

We **further recommend** the following:

(i) In any year when a Level II business — one falling within Tier II listed above — has a serious incident, the business shall become subject to the more-frequent inspection schedule and higher fee amount set forth above under Tier I; and

(ii) In any year when a Level II business — one falling under Tier I above — shall no longer have a serious incident within the past three (3) years, the business shall become subject to the less-frequent inspection schedule and lower fee amount set forth above under Tier II.

We believe it's wise to reward those businesses without a history of serious incidents; Hayward should strongly support such enterprises. Correspondingly, however, we believe the City should significantly increase the frequency of inspections at those establishments with one or more such incidents, levying a commensurately higher cost recovery fee.

2. **Alcohol Beverage Outlet Fees: Administration Expenses**

At present, the draft Alcoholic Beverage Outlet Fees exclude the costs of certain City departments — Finance; Development Services; and the City Attorney's Office — charged, in part, with administering and enforcing the related regulations. The staff report states in part:

"There will undoubtedly be demand from the General Fund primarily related to staff of the Finance and Development Services Departments, as well as the City Attorney's Office, in enforcing the recommended provisions, especially the 'Deemed Approved' provisions that require noticing and annual collection and oversight of fees. It is difficult to estimate that cost ... Future annual adjustments to fees may be needed in response to such demand and costs."

We **recommend** the City:

(i) Increase the proposed Alcoholic Beverage Outlet Fees — as set forth in Attachment V to the staff report; including both the Level I and Level II fees — to include a reasonable estimate of the costs of City Finance, Development Services and City Attorney staff to administer and enforce such Fees; and

Mayor Sweeney, Mayor Pro Tempore Salinas, and Council Members Peixoto, Halliday, Zermelo, Salinas, Jones & Mendall
September 23, 2013
Page 3

(ii) Review such estimate in a public hearing after one (1) year, when staff will possess actual cost data over a reasonable period of time. We believe it's prudent for the City — particularly in light of ongoing revenue constraints and cost concerns — to now include staff administration and enforcement costs within such Level I and Level II fees.

Thank you for your attention to the foregoing.

Sincerely,

/s/ Richard C. Ersted

Cc: David Rizk, Director, Development Services, City of Hayward via email